IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1178 OF 2005

WITH

SUMMARY SUIT NO.3760 OF 1989

Karimjee Ltd. ...Plaintiffs

Versus

Sharad R.Khanna ...Defendant

And

Eat India Pvt.Ltd. ...Applicant

.....

Mr.D.V.Merchant i/b M/s.Shaunak Satpute & Co.
for Plaintiffs.
Mr.Srikant Shah i/b Mehta & Girdharlal for Defendant.
Mr.I.D'Cruz for Applicant.

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CORAM: A.M.KHANWILKAR, J.

OCTOBER 4, 2005.

P.C.

1. Heard Counsel for the parties. Perused the pleadings.

2. This Application is for extension of time to conclude recording of evidence on commission, which was to be recorded in terms of order dated 8th June 2005. This Application is resisted by Defendant as well as the Applicant. According to the Defendant, the Defendant has stood guarantor for the Company whose reference is registered and pending before the BIFR. In that view of the matter, the present Suit cannot proceed in law by virtue of Section 22 of Industrial Act. It is then argued that under order dated 8th June 2005, recording of evidence was to be concluded before 15th July 2005. No prayer for condonation of delay in taking out this Application is made. Insofar as the Applicant is concerned, it is submitted that the Applicant has filed appeal against order dated 8th June 2005. It is also stated that the said appeal has been filed in the last week.

3. After considering the rival submissions, insofar as the first objection taken on behalf of the Defendant, the same does not commend to me. It is well settled by now that the guarantors cannot be absolved from the proceedings which are either

pending or to be instituted for recovery of amounts even in respect of Company, which is before the BIFR. The protection under Section 22 is limited to Sick industries and not to the guarantors. Accordingly, there is no substance in this objection.

4. The second objection that there is no formal prayer for condonation of delay in taking out the present Application, I see no substance even in that objection. The Application is accompanied by affidavit in support which points out that due to reasons beyond the control of the Plaintiff, present Chamber Summons came to be filed belatedly. It is always open to this Court in the interest of justice to excuse the delay in taking out the present Application. The delay is only of about three weeks, inasmuch as the Chamber Summons has been filed on 8th September 2005. In the circumstances, even if there is some delay in taking out the Chamber Summons, the same will have to be excused in the interest of justice. Though such specific prayer is not made in the Chamber Summons, such relief can be granted in terms of

prayer clause (c) in the interest of justice.

5. Insofar as the objection of the Applicant that the Applicant has carried the matter in appeal against the order dated 8th June 2005, that objection need not detain the hearing of the present Application. The present Application is being disposed of subject to such other order to be passed by the Appellate Court in the Appeal filed against the order dated 8th June 2005.

6. In my opinion, taking overall view of the matter, in the interest of justice, further six weeks' time will have to be granted for recording of evidence on commission in terms of order dated 8th June 2005. The Applicant to file affidavit of concerned witnesses in lieu of examination-in-chief within two weeks from today, so that, cross-examination can be concluded within the extended time.

7. Chamber Summons disposed of on the above terms. No order as to costs.

A.M.KHANWILKAR, J.